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RUEKJCS/CJCS WASHINGTON DC
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RUENAAA/SECNAV WASHINGTON DC
RUEATRS/TREASURY DEPT WASHDC
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C O N F I D E N T I A L SECTION 01 OF 12 TOKYO 003457

SIPDIS

DOD FOR OSD/APSA SHIVERS/SEDNEY/HILL; DEPT OF NAVY FOR
SECNAV WINTER, ASN PENN, DASN BIDDICK; DON PASS TO JGPO FOR
BICE/HICKS; NSC FOR WILDER; PACOM FOR J00/J01/J4/J5; USFJ
FOR J00/J01/J4/J5

E.O. 12958: DECL: 12/15/2018

TAGS: MARR PREL PGOV JA

SUBJECT: PART 1 OF 2 -- U.S., JAPAN REACH AD REF GUAM
INTERNATIONAL AGREEMENT

REF: STATE 128612

Classified By: Ambassador J. Thomas Schieffer; Reasons: 1.4 (b/d)

¶11. (C) Summary: U.S. and Japanese negotiators reached an ad ref agreement on December 15 for a bilateral International Agreement (IA) committing the Japanese government to provide USD 2.8 billion to construct facilities and infrastructure on Guam to support the relocation of III Marine Expeditionary Forces (MEF) units from Okinawa. The ad ref agreement meets all of the negotiating objectives contained in Reftel. The text includes linkages, approved at the Prime Ministerial level, between construction of facilities on Guam and Japanese actions to complete the Futenma Replacement Facility (FRF). The Japanese government agreed to measure its cash contributions for Guam projects in USFY2008 constant dollars and provide the U.S. government flexibility in funds management. On December 13, the Ministry of Finance approved USD 336 million for Guam projects in the JFY2009 budget. The Japanese government has also indicated plans to accelerate Diet approval of the IA in order to mitigate against the risk of an early election. The decision to conclude a Treaty-level (on the Japanese side) agreement committing Tokyo to provide multi-year funding for Guam and compelling completion of the FRF as a precondition to relocating III MEF elements to Okinawa significantly reduces the risk that local politics in Okinawa or a change in government in Tokyo will

result in the unraveling of the May 1, 2006 realignment package. End Summary.

Background

¶2. (C) U.S. and Japanese negotiators concluded an ad ref International Agreement (IA) regarding the implementation of the relocation of III MEF personnel from Okinawa to Guam on December 15. The Japanese government requested a bilateral IA in order to secure multi-year funding from the Diet for the Guam relocation, part of the package of U.S. Forces realignment measures agreed upon at the May 1, 2006 Security Consultative Committee (SCC) meeting. In addition to legally binding the current and future Japanese Cabinets to implement the political-level SCC agreement, the Japanese government sought clarity from the U.S. government on how Japanese funds would be managed. Tokyo specifically requested assurances from the U.S. government on equal treatment for Japanese companies bidding on Japanese-funded projects, tax exemptions, and a mechanism for Japan to incrementally fund multi-year projects. The Japanese side also sought to measure Japan's USD 2.8 billion (the cash portion of Japan's 6.09 billion overall commitment) contribution in nominal 2008 dollars (i.e. not to be adjusted for inflation). The Japanese government also sought confirmation from the U.S. side that it remained committed to relocating to Guam, and that the U.S. would reach mutual agreement with Japan over

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any major actions that would affect the use of the facilities (such as a future Base Realignment and Closure decision to draw down forces in Guam).

¶3. (C) In agreeing to enter into IA negotiations, the U.S. government insisted that the IA be part of an overall package to include: 1) an explicit linkage in the IA that the Relocation of III MEF elements to Guam be made contingent on completion of the Futenma Replacement Facility (FRF); 2) full funding for JFY2009 projects on Guam identified by the Joint Guam Program Office (JGPO); 3) agreement on the flexible use of funds, including interest, deposited in the U.S. Treasury for Guam construction projects; 4) calculation of Japan's USD 2.8 billion in constant dollars or agreement to off-set lost purchasing power through use of a nominal calculation; and 5) adequate funding for the FRF. The U.S. side also made clear that the IA and the Implementing Guidance (IG) are linked and must be read together to constitute a whole agreement. Furthermore, the U.S. side made clear that the IA would be treated as an executive agreement by the United States Government and not made subject to Senate approval.

Ad Ref Agreement

¶4. (C) After a series of negotiating sessions in Washington and Tokyo from November 4 to December 15, the two sides reached substantive agreement on the IA and a set of side arrangements. These side arrangements include detailed Department of Defense (DOD)-Ministry of Defense (MOD) Implementing Guidance (IG), an Exchange of Diplomatic Notes, and an oral commitment to be made by the Japanese Foreign Minister at the time of the signing of the IA. The contents of all three separate arrangements were agreed upon at the same time as the ad ref agreement for the IA, and were confirmed only after the Japanese side reported that it had secured sufficient budget for Guam projects in the JFY2009 budget request. This set of arrangements meets the negotiating instructions contained in Reftel and addresses all the U.S. objectives stated in para 3 above. Specifically:

-- Objective 1: Explicit linkage in the IA that the Relocation of III MEF elements to Guam be made contingent on completion of the Futenma Replacement Facility (FRF):

Preamble paragraph 9 and Articles 2, 3, and 9 incorporate this explicit linkage.

-- Objective 2: Secure adequate funding for JFY2009:

Immediately upon conclusion of a substantive agreement on the IA/IG texts, the Ministry of Finance (MOF) agreed to budget USD 336 million for Guam relocation projects in the JFY2009 budget. This budget will be approved by the Cabinet and made public on or about December 20.

-- Objective 3: Agreement on the flexible use of funds,

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including interest, deposited in the U.S. Treasury for Guam construction projects: Through both the IA, especially Article 7, and the IG, the Japanese government agreed to the flexible use of Japanese funds to cover potential cost overruns and other contingencies (details contained in paragraph 3 (f) of the IG). The Japanese side also agreed to seek additional funding if necessary to meet project-funding obligations (also para 3 (f) of the IG). Moreover, Japan committed to transfer funds in a timely way each year. The IG (paragraph 3 (a)) stipulates that Japan will transfer its annual contributions within 30 days of the annual Exchange of Notes (EON) confirming the proposed Guam-related budget for each fiscal year. Japan's fiscal year begins on April 1 and the Ministry of Foreign Affairs (MOFA) has committed to completing the EON ""as soon as possible"" after the Diet enacts the annual budget in late March. This commitment will be reaffirmed by the Foreign Minister at the time the IA is formally signed.

-- Objective 4: Preserve Purchasing Power of the Japanese Contribution: The Japanese government agreed to calculate its USD 2.8 billion contributions in 2008 constant (i.e., adjusted for inflation) dollars. The Japanese side further agreed (IG paragraph 3 (b)) to discount their contribution using the specific index proposed by the USG (i.e., the Engineering News Record-Building Cost Index ""ENR BCI"").

-- Objective 5: Adequate funding for the FRF: MOD informed the Embassy that MOF approved nearly USD 300 million (total) for FRF projects in JFYs 2009 and 2010.

-- Preserving the status as an Executive Agreement for the United States: U.S. commitments are caveated as being subject to the availability of funds, tangible progress on the FRF, and Japanese funding for Guam Relocation. The U.S. entirely rebuffed Japanese pressure to grant new tax exemptions or allow incremental funding mechanisms for Japanese projects. The U.S. side made clear that all actions under the IA will be undertaken in accordance with relevant U.S. laws and regulations.

Way Ahead/Timeline

¶5. (C) Given the potential for a general election after the start of the Japanese fiscal year on April 1, 2009, the Japanese side has decided to accelerate Diet review of the IA. The IA need only be approved by the Diet's Lower House, which is now dominated by the ruling coalition. Even if the opposition-controlled Upper House were to vote it down or take no action, the IA would be ratified 30 days after Lower House approval. In order to meet this timetable, MOFA has asked the U.S. to be prepared to sign the IA the weeks of February 9 or 16, either in Washington or Tokyo. If this schedule holds, the timeline will be as follows:

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December 15: Ad Ref Agreement Reached

December 19: Japan's Cabinet approves JFY2009 budget,

including USD 336 million for Guam
January 5: Diet regular session convenes
Mid-January: JFY2009 budget submitted to the Diet
Mid-February: IA signed by Japanese Foreign Minister and a U.S. counterpart
Early March: JFY2009 budget enacted/IA submitted to Diet
Mid/Late March: IA approved by Diet Lower House
Mid/Late April: IA ratified
Late April/Early May: Exchange of Notes, IG signed
Early/Mid May: Japan transfers USD 336 million to a designated U.S. Treasury Account

Text of IA

¶6. (SBU) The following is the ad ref IA text as confirmed on December 15. The text of the Exchange of Notes follows in paras 7 and 8. More details on the negotiating history behind this package of agreements is further clarified in Paras 9-29 below.

Begin draft text of the IA

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAPAN CONCERNING THE IMPLEMENTATION OF THE RELOCATION OF III MARINE EXPEDITIONARY FORCE PERSONNEL AND THEIR DEPENDENTS FROM OKINAWA TO GUAM

The Government of the United States of America and the Government of Japan,

Affirming that the United States-Japan security arrangements, based on the Treaty of Mutual Cooperation and Security between the United States of America and Japan signed at Washington on January 19, 1960, is the cornerstone for achieving common security objectives,

Recalling that, at the meeting of the United States-Japan Security Consultative Committee on May 1, 2006, the Ministers recognized that the implementation of the realignment initiatives described in the Security Consultative Committee document, "United States-Japan Roadmap for Realignment Implementation" (hereinafter referred to as "the Roadmap") will lead to a new phase in alliance cooperation, and reduce the burden on local communities, including those on Okinawa, thereby providing the basis for enhanced public support for the security alliance,

Emphasizing their recognition of the importance of Guam for forward presence of United States Marine Corps forces, which provides assurance of the United States' commitment to security and strengthens deterrent capabilities in the

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Asia-Pacific region,

Reaffirming that the Roadmap emphasizes the importance of force reductions and relocation to Guam in relation to the realignment on Okinawa and stipulates that approximately 8,000 III Marine Expeditionary Force (hereinafter referred to as "the III MEF") personnel and their approximately 9,000 dependents will relocate from Okinawa to Guam by 2014, in a manner that maintains unit integrity, and recognizing that such relocation will realize consolidation and land returns south of Kadena,

Recalling that the Roadmap stipulates that United States Marine Corps CH-53D helicopters will be relocated from Marine Corps Air Station Iwakuni to Guam when the III MEF personnel relocate from Okinawa to Guam, the KC-130 squadron will be based at Marine Corps Air Station Iwakuni with its headquarters, maintenance support facilities, and family support facilities, and the aircraft will regularly deploy on a rotational basis for training and operations to Maritime Self-Defense Forces Kanoya Base and Guam,

Reaffirming that the Roadmap stipulates that, of the estimated ten billion, two hundred seventy million United States dollar (\$10,270,000,000) cost of the facilities and infrastructure development costs for the III MEF relocation to Guam, Japan will provide six billion, ninety million United States dollars (\$6,090,000,000) (in U.S. Fiscal Year 2008 dollars), including two billion, eight hundred million United States dollars (\$2,800,000,000) in direct cash contributions, to develop facilities and infrastructure on Guam to enable the III MEF relocation, recognizing the strong desire of Okinawa residents that such force relocation be realized rapidly,

Reaffirming further that the Roadmap stipulates that the United States will fund the remainder of the facilities and infrastructure development costs for the relocation to Guam—estimated in U.S. Fiscal Year 2008 dollars at three billion, one hundred eighteen million United States dollars (\$3,180,000,000) in fiscal spending plus approximately one billion (\$1,000,000,000) for a road,

Recalling that the Roadmap stipulates that, within the overall package, the Okinawa-related realignment initiatives are interconnected, specifically, consolidation and land returns south of Kadena depend on completing the relocation of III MEF personnel and dependents from Okinawa to Guam, and the III MEF relocation from Okinawa to Guam is dependent on: (1) tangible progress toward completion of the Futenma Replacement Facility, and (2) Japan's financial contributions to fund development of required facilities and infrastructure on Guam,

Have agreed as follows:

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Article 1

11. The Government of Japan shall make cash contributions up to the amount of two billion, eight hundred million United States dollars (\$2,800,000,000) (in U.S. Fiscal Year 2008 dollars) to the Government of the United States of America as a part of expenditures for the relocation of approximately 8,000 III Marine Expeditionary Force personnel and their approximately 9,000 dependents from Okinawa to Guam (hereinafter referred to as "the Relocation") subject to paragraph 1 of Article 9 of this Agreement.

12. The amount of Japanese cash contributions to be budgeted in each Japanese fiscal year shall be determined by the Government of Japan through consultation between the two Governments and reflected in further arrangements that the two Governments shall conclude in each Japanese fiscal year (hereinafter referred to as "the further arrangements").

Article 2

The Government of the United States of America shall take necessary measures for the Relocation, including funding for projects of the Government of the United States of America to develop facilities and infrastructure on Guam subject to paragraph 2 of Article 9 of this Agreement.

Article 3

The Relocation shall be dependent upon tangible progress made by the Government of Japan towards the completion of the Futenma Replacement Facility as stipulated in the Roadmap. The Government of Japan intends to complete the Futenma Replacement Facility as stipulated in the Roadmap in close cooperation with the Government of the United States of America.

Article 4

The Government of the United States of America shall use Japanese cash contributions and their accrued interest only for projects to develop facilities and infrastructure on Guam for the Relocation.

Article 5

The Government of the United States of America shall ensure that all participants in the process of acquisition for projects to be funded by Japanese cash contributions for the Relocation shall be treated fairly, impartially, and equitably.

Article 6

The two Governments shall designate the Ministry of Defense of Japan and the Department of Defense of the United States

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of America respectively as the implementing authorities. The two Governments shall hold consultations at the technical level on implementation guidance to be followed by the implementing authorities, and on the specific projects referred to in paragraph 1.(a) of Article 7 of this Agreement. Through such consultations, the Government of the United States of America shall ensure that the Government of Japan shall be involved, in an appropriate manner, in the implementation of the said projects.

Article 7

1.(a) Specific projects to be funded in each Japanese fiscal year shall be agreed upon between the two Governments and reflected in the further arrangements.

(b) The Government of the United States of America shall maintain a United States Treasury account to which the Government of Japan shall provide cash contributions. The Government of the United States of America shall open and maintain, under the said account, a sub-account for Japanese cash contributions in each Japanese fiscal year.

¶2. Japanese cash contributions and their accrued interest that is contractually committed to pay for specific projects shall be credited, based on the method of calculation using an index to be agreed upon between the implementing authorities referred to in Article 6 of this Agreement, to the total amount of Japanese cash contributions, which is up to the amount of two billion eight hundred million United States dollars (\$2,800,000,000) (in U.S. Fiscal Year 2008 dollars).

3.(a) In case there remains an unused balance of Japanese cash contributions after the completion of all contracts, as evidenced by receipt of documents releasing the Government of the United States of America of any further financial and contractual liability, for all specific projects funded in the same Japanese fiscal year, the Government of the United States of America shall return the said unused balance to the Government of Japan, except as provided in paragraph 3.(b) of this Article.

(b) The Government of the United States of America may use, with the consent of the implementing authority of the Government of Japan, the unused balance for other specific projects funded in the same Japanese fiscal year.

¶4. (a) The Government of the United States of America shall return interest accrued from Japanese cash contributions to the Government of Japan, except as provided in paragraph 4.(b) of this Article, after the completion of all contracts, as evidenced by receipt of documents releasing the Government of the United States of America of any further financial and contractual liability, for the last specific projects funded by Japanese cash contributions.

(b) The Government of the United States of America may use, with the consent of the implementing authority of the Government of Japan, interest accrued from Japanese cash contributions for projects funded by Japanese cash contributions.

¶5. The Government of the United States of America shall provide the Government of Japan with a report every month on transactions in the United States Treasury account, including all the sub-accounts related to Japanese cash contributions.

Article 8

The Government of the United States of America shall consult with the Government of Japan in the event that the Government of the United States of America considers changes that may significantly affect facilities and infrastructure funded by Japanese cash contributions, and shall take appropriate actions, taking Japanese concerns into full consideration.

Article 9

¶11. Japanese cash contributions referred to in paragraph 1 of Article 1 of this Agreement shall be subject to funding by the Government of the United States of America of measures referred to in Article 2 of this Agreement.

¶12. United States' measures referred to in Article 2 of this Agreement shall be subject to: (1) the availability of funds for the Relocation, (2) tangible progress made by the Government of Japan towards the completion of the Futenma Replacement Facility as stipulated in the Roadmap, and (3) Japan's financial contribution as stipulated in the Roadmap.

Article 10

The two Governments shall consult with each other regarding the implementation of this Agreement.

Article 11

This Agreement shall be approved by the United States of America and Japan in accordance with their respective internal legal procedures. This Agreement shall enter into force on the date when diplomatic notes indicating such approval are exchanged.

IN WITNESS WHEREOF the undersigned, duly authorized for the purpose, have signed the present Agreement.

DONE in duplicate, at () in the English and Japanese languages, both equally authentic, this () day of (), 2009.

End IA Text

¶7. (SBU) The following is the draft text of the Japanese Diplomatic Note and Annex:

Begin Japanese Note and Annex

Excellency,

I have the honor to refer to the Agreement between the Government of the United States of America and the Government of Japan concerning the Implementation of the Relocation of III Marine Expeditionary Force personnel and their dependents signed at on , 2009 (hereinafter referred to as "the Agreement"), which provides, inter alia, that the amount

of Japanese cash contributions to be budgeted in each Japanese fiscal year shall be determined by the Government of Japan through consultation between the two Governments and reflected in further arrangements that the two Governments shall conclude in each Japanese fiscal year.

I have further the honor to refer to the discussions that have taken place between the Government of the United States of America and the Government of Japan concerning the implementation of the relocation of approximately 8,000 III Marine Expeditionary Force personnel and their approximately 9,000 dependents from Okinawa to Guam and to propose on behalf of the Government of Japan the following arrangements as a result of those discussions:

¶11. The amount of Japanese cash contributions budgeted in the Japanese fiscal year 2009 is three hundred thirty six million United States dollars (\$336). The Government of Japan shall provide to the Government of the United States of America, in accordance with the applicable laws and regulations, the said Japanese cash contributions in the Japanese fiscal year 2009.

¶12. The amount of the Japanese cash contributions for each specific project is stipulated in the Annex.

¶13. The Annex may be modified by agreement between the Government of the United States of America and the Government of Japan.

I have further the honor to propose that, if the proposals set out above are acceptable to the Government of the United States of America, this Note and Your Excellency's reply to that effect on behalf of the Government of the United States of America shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force on the date of your Excellency's reply.

I avail myself of this opportunity to (extend/renew) to Your Excellency the assurance of my highest consideration.

Annex

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Design project (Apra Harbor Medical Clinic, Bachelor Enlisted Quarters, Fire Station, Waterfront Headquarters Building)

\$15 M

On-base infrastructure project in Andersen Air Force Base

North Ramp \$27 M

On-base infrastructure project in Apra Harbor \$169 M

On-base infrastructure project in Finegayan (Phase 1) \$124 M

Total: \$336 M

End Japanese Note and Annex

¶18. (SBU) The following is the draft text of the U.S. Diplomatic Note:

Begin U.S. Note

Excellency,

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date, which reads as follows:

" "(Japanese Note) "

I have further the honor to confirm on behalf of the Government of the United States of America that the proposals set out in Your Excellency's Note are acceptable to the Government of the United States of America and that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments, which shall enter into force on the date of this reply.

I avail myself of this opportunity to (extend/renew) to Your

Excellency the assurance of my highest consideration.

End Draft Text of U.S. Diplomatic Note

Negotiating Background on IA
(Keyed to IA Text in Para 7)

Preamble

¶9. (C) Most of the language in the Preamble came directly from existing public documents, especially the United States-Japan Roadmap for Realignment Implementation ("the Roadmap"), released by the Security Consultative Committee (SCC) on May 1, 2006. The U.S. requested two specific areas of the public documents be clarified in the Preamble. First, the U.S. requested that the Preamble introduce the idea that the "approximately 9,000 dependents" that will transfer with the 8,000 Marines from Okinawa to Guam be described as "associated dependents" to capture the idea that there may be more dependents joining the Marines on Guam than currently

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reside with those same Marines on Okinawa due to differing stationing policies. The second was a U.S. request that the Preamble delete reference to the approximately one billion dollar military road on Guam. This road was included during the April 2006 negotiations on cost-sharing as a way to increase the overall cost estimate (i.e., the denominator) and thereby reduce the share of total costs borne by Japan. During the negotiations over the IA Preamble language, the U.S. clarified that the United States would not consider the road an absolute prerequisite for the completion of the Relocation. The Japanese side acknowledged both points, but strongly resisted any language that differed from existing public formulations out of concern that changes would draw Diet scrutiny that would distract from focus on the key issues in the IA. Having registered these clarifications, and obtained satisfactory corresponding Japanese acknowledgment, the U.S. side acceded to the Japanese request to adhere to existing Roadmap language.

¶10. (C) Separately, the U.S. introduced two issues into the Preamble that had not previously been in public documents. The first is paragraph four of the Preamble ("Emphasizing their recognition of the importance of Guam for forward presence"). The U.S. had requested even stronger language to stress the unique capabilities of Guam in the context of overall U.S. Pacific Strategy. However, MOD, reportedly at the level of Administrative Vice Minister Kohei Masuda, was not willing to use the words "unique," "strategic," or "location" in a bilateral document due to "political sensitivities" (implying Japan's war-time history with Guam). The U.S. noted its disappointment that the Japanese side was not willing to provide requested language.

¶11. (C) Additionally, the U.S. proposed references to the opportunities provided by Guam relocation for increased Self-Defense Force (SDF) training. Although explicit language exists in Agreed Implementation Plans (AIP) that points to specific commitment by Japan to maintain a near-continuous rotational presence on Guam for training, and although earlier SCC documents speak more generically about training opportunities offered by Guam, the MOD refused to mention training, again invoking AVM Masuda's personal veto of such a reference. The MOD argued that reference to SDF training was outside the scope of the IA, would attract a number of distracting questions, and would leave MOD unable to address those questions given the undeveloped plans for SDF training on Guam. The U.S. side registered its strong disappointment and pledged to work with the Japanese side to find other ways to promote the positive effect of U.S.-Japan training cooperation on Guam.

Article 1

¶12. (C) The purpose of Article 1 is to highlight Japan's
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obligations. Paragraph 1 captures the Japanese government's overall commitment for multi-year funding, and paragraph 2 notes that Tokyo's actual contributions will be decided annually based on the program implementation. The ""further arrangements"" referenced in paragraph 2 are the annual Exchanges of Notes and Annexes (see para 7 above). Japanese commitments are subject to conditions outlined in Article 9, displaced from Article 1 in order to keep the tone of Article 1 ""more positive,"" at the direction of MOFA Administrative Vice Minister Mitoji Yabunaka.

¶13. (C) Definitions: Article 1 includes the definition of ""the Relocation"" as ""the relocation of approximately 8,000 III Marine Expeditionary Force personnel and their approximately 9,000 dependents from Okinawa to Guam." The Japanese side specifically highlighted that this definition deliberately excludes a reference to ""by 2014"" as part of the IIA obligation, thereby allowing Japanese funding to continue beyond 2014, if necessary. The two sides had a frank discussion about the origins of the numbers 8,000/9,000 in relation to actual personnel and dependents on Okinawa who will move to Guam. The number 8,000 refers to authorized positions in the units identified in the AIPs as relocating to Guam. The number 9,000 dependents is based on a calculation of the number of dependents associated with such units if manned in full. In the context of drafting the 2006 Roadmap, both the 8,000 and the 9,000 numbers were deliberately maximized to optimize political value in Japan, but the two sides knew that these numbers differed significantly from actual Marines and dependents assigned to units in Okinawa. To clarify the balance, the AIP also identifies that 10,000 Marines will remain on Okinawa, and lists the units associated with those 10,000 Marines. In 2004-2006, when the Roadmap was negotiated, the number of Marines assigned to the units in Okinawa was on the order of 13,000, significantly less than the 18,000 authorized. Likewise, the total number of dependents on Okinawa was less than 9,000. These numbers are regularly briefed by U.S. Forces Japan to various Japanese counterparts. Japanese Diet members from Okinawa have also highlighted that the number of authorized Marine/dependents moving to Guam described in the public report does not match actual numbers on Okinawa today.
ZUMWALT